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GENERAL ELECTRIC COMPANY (PCPI)
C/O FLETCHER YODER
P. O. BOX 692289
HOUSTON, TX 77269-2289

EXAMINER	
KIM, TAE JUN	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/682,227
Filing Date: October 08, 2003
Appellant(s): HARDWICKE ET AL.

MAILED
SEP 05 2007
Group 3700

Tait Swanson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06/28/2007 appealing from the Office action mailed 08/25/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The amendment after final rejection filed on 06/28/2007 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

The rejections made under 35 USC 112, 1st and 2nd paragraph are obviated by the amendment after final of 06/28/2007 and withdrawn.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following evidence is relied upon by the examiner in the rejection of the claims under appeal.

6,495,207	PROCIW et al	12-2002
6,834,504	GRIFFIN et al	12-2004
6,464,489	GUTMARK et al	10-2002
JP11-062549	UMEMURA et al	03-1999
2003/0118762	BROWN et al	12-2002
2,917,384	GRANDEY	12-1959

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

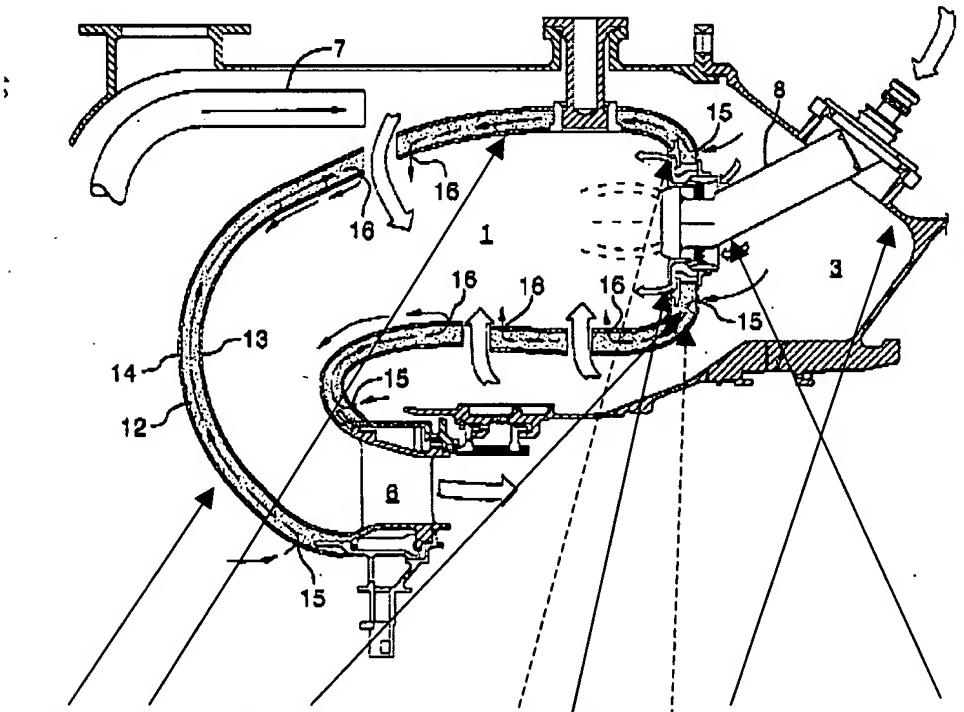
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the Appellant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the Appellant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

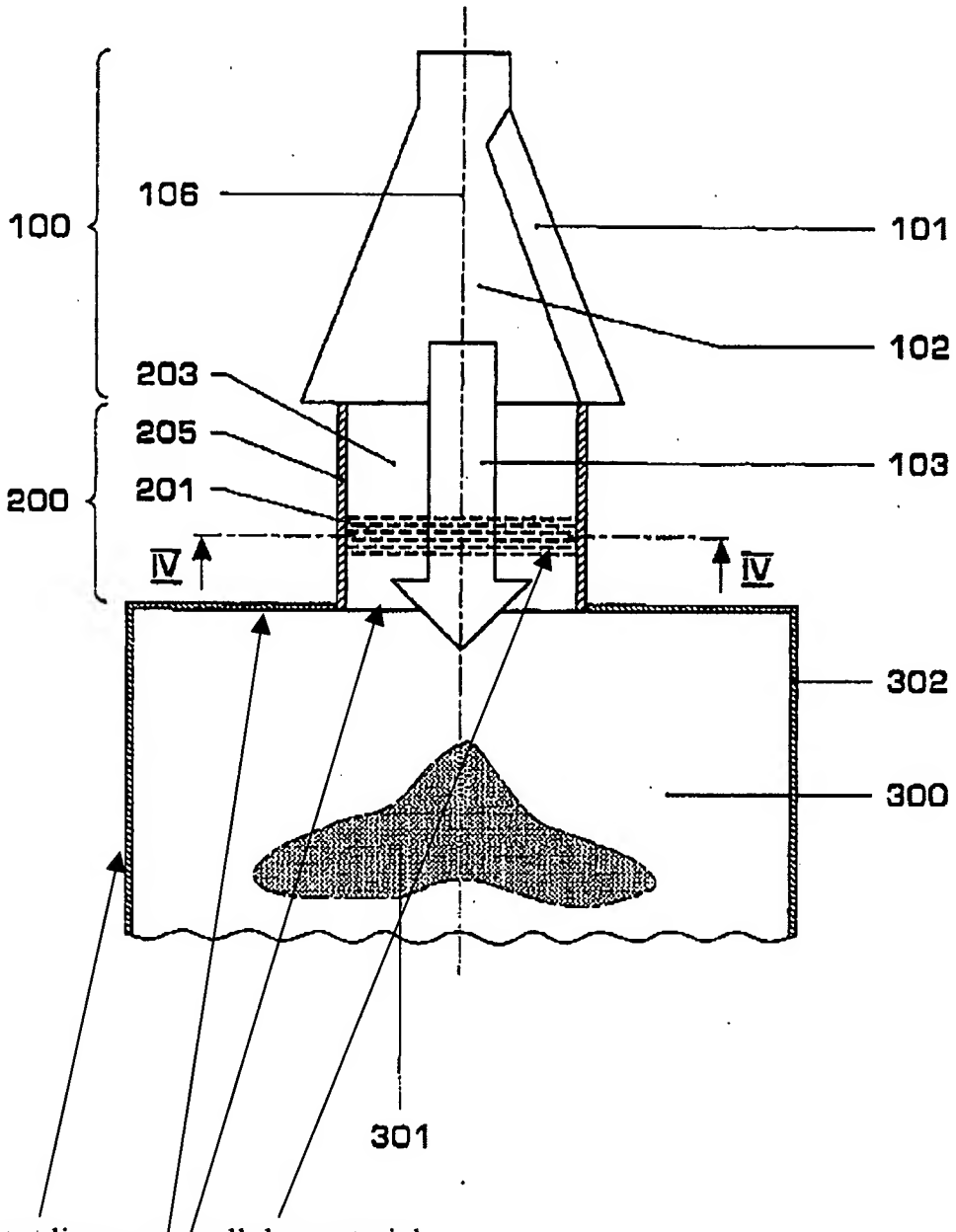
Claims 1, 2, 6, 7, 12, 15-19, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Prociw et al (6,495,207). Prociw et al teach a combustor and a combustor cap liner assembly, comprising: a combustor having a combustor casing 14 and a combustion liner 13 within the combustor casing, wherein the combustion liner is closed at a forward end by the combustor liner cap assembly, the combustor including a cellular solid media 12 disposed within the combustor liner cap assembly and/or between the combustion liner cap assembly and an end cover to the combustor; or the cellular solid media in a space defined by opposing surfaces of a circular plate, a burner tube, and an effusion plate of the combustion liner cap assembly; wherein the cellular solid media is a metal foam (col. 3, lines 1+; col. 6, lines 65+); the cellular media in the combustion liner cap assembly is disposed about at least one burner tube 8 extending through the combustion liner cap assembly; wherein the cellular solid media comprises at least a ceramic material, a metallic material (e.g. nickel aluminide col. 3, lines 46+), or a combination thereof; wherein the cellular solid media comprises an open cell metal foam media, an open cell ceramic foam media, a closed cell foam, a reticulated foam having both closed cells and open cells, a lattice block structure, or a cellular alloy; wherein the cellular solid media comprises a metal alloy (e.g. nickel

aluminide) and/or superalloy material; wherein the metal alloy and or super alloy comprises a metal selected from the group consisting of chrome, aluminum, cobalt, nickel, iron, tungsten, molybdenum, and titanium; wherein the cellular solid media disposed within the combustor liner cap assembly and/or between the combustion liner cap assembly and the end cover comprises a single disc (Fig. 2). Note the combustor 1 is an annular combustor (col. 6, lines 40+) and thus there are a plurality of burner tubes 8 extending through the cap assembly.



Claims 1, 2, 6, 12, 15, 18, 19, as best understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Griffin et al (6,834,504). Griffin et al teach a combustor and a combustor cap liner assembly, comprising: a combustor having a

combustor casing (inherent, see Gutmark et al for evidentiary support) and a combustion liner 302 within the combustor casing, wherein the combustion liner is closed at a forward end by the combustor liner cap assembly, the combustor including a cellular solid media 202 disposed within the combustor liner cap assembly (can include 108 and 209) and/or between the combustion liner cap assembly (can include 209) and an end cover (inherent, see Gutmark et al the end cover surrounds element number 12) for evidentiary support) to the combustor; or the cellular solid media in a space defined by opposing surfaces of a circular plate 108, a burner tube 205, and an effusion plate 209 of the combustion liner cap assembly; wherein the cellular solid media comprises a metal foam material (col. 7, lines 4-6); wherein the cellular solid media comprises a metal alloy (e.g. steel or steel aluminum alloy, col. 7, lines 12+) and/or superalloy material; wherein the metal alloy and or super alloy comprises a metal selected from the group consisting of chrome, aluminum, cobalt, nickel, iron, tungsten, molybdenum, and titanium; wherein the cellular solid media disposed within the combustor liner cap assembly and/or between the combustion liner cap assembly and the end cover comprises a single disc (Fig. 2) and multiple discs; wherein the cellular solid media comprises a ceramic material.



combustor liner, cap, cellular material

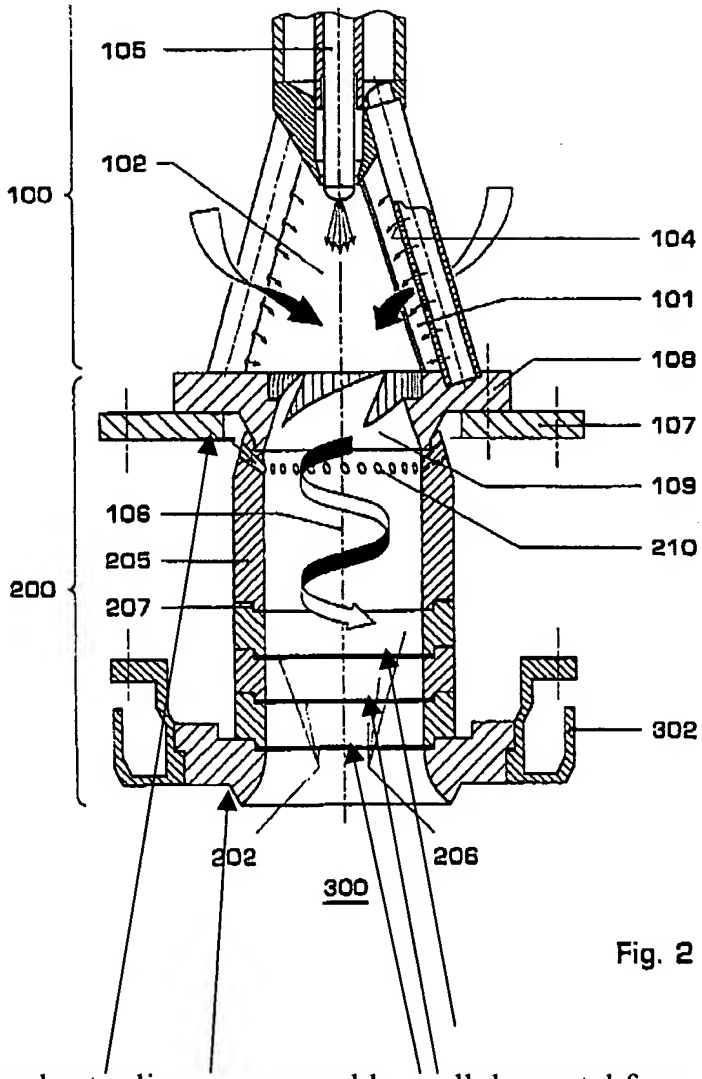


Fig. 2

part of combustor liner cap assembly; cellular metal foam

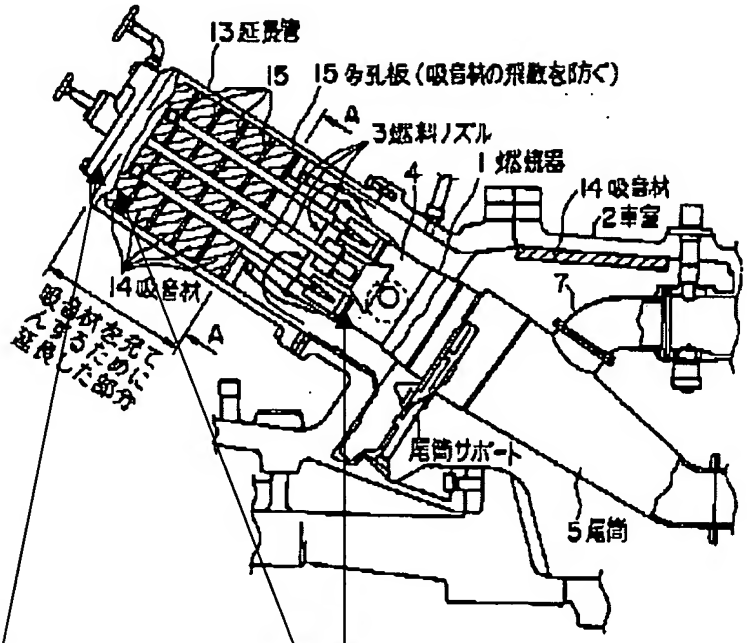
Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 11-062549 in view of Grandey (2,917,384) and/or Brown et al (2003/00118762). JP '549 teach combustor and a combustor cap liner assembly, comprising: a combustor having a combustor casing and a combustion liner within the combustor casing, wherein the combustion liner is closed at a forward end by the combustor liner cap assembly, the combustor including a noise/vibration absorbing media 14 or 15 with different porosities disposed within the combustor liner cap assembly and/or between the combustion liner cap assembly and an end cover to the combustor; comprising the cellular solid media in the combustion liner cap assembly is disposed about at least one burner tube 3 extending through the combustion liner cap assembly; wherein the vibration absorbing media includes multiple disks. Due to lack of translation, it is not clear whether JP '549 use a metal foam cellular structure for the noise/vibration absorbing media. Grandey teaches the use of metal foams (col. 1, lines 1-37; col. 2, lines 38-45, 60+) for high temperature applications including in gas turbine engines (col. 1, lines 24+). These materials are disclosed as being advantageous for thermal insulators and noise/sound attenuation. The materials include metals and their alloys (col. 2, lines 64+) as well as the production of the pore size of nearly any range and physical properties (col. 3, lines 35-40). Brown et al teach a noise/vibration absorbing media used in turbine applications using a cellular structure (see e.g. Fig. 8) made of the claimed materials and porosity (page 2, end of paragraph 17; page 4, paragraph 31). The use of metal foams is deemed equivalent to using other materials such ceramic foams, women materials, or particular materials.

Furthermore, it would seem inherent that materials having the claimed porosity would also have the claimed range of density (which is determined by the porosity). Alternately, this is regarded as being within the ordinary skill in the art as being an obvious matter of finding the workable ranges in the art. It would have been obvious to one of ordinary skill in the art to employ the noise/vibration reduction media taught by Grandey and/or Brown et al, in order to enhance the noise/vibration reduction desired by JP '549 and/or to use materials well known in the gas turbine noise attenuation as being suitable for high temperature applications and for the same purpose. It would have been obvious to one of ordinary skill in the art to employ the claimed ranges as being a material property of the claimed materials or as an obvious matter of finding the workable ranges in the art.



end cover; combustor liner cap assembly

Claims 1, 2, 6-12, 15, 18, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griffin et al (6,834,504) in view of Gutmark et al (6,464,489). Griffin et al teach various aspects of the claimed invention and would inherently use a combustor casing and end cover. In order to obviate any doubt, Gutmark et al show an entire combustor assembly from the same manufacturer where the combustor casing and end cover are explicitly shown. It would have been obvious to one of ordinary skill in the art to employ a combustor casing and end cover, as being the conventional practice in the art. There are multiple discs present and the matter of using different porosities for the multiple discs and the various material ranges is regarded as being within the ordinary skill in the art as an obvious matter of finding the workable ranges in the art. It would

have been obvious to one of ordinary skill in the art to employ different porosities and/or material ranges as being an obvious matter of finding the workable ranges in the art.

(10) Response to Argument

Appellant's arguments concerning Prociw et al are not persuasive. Appellant's interpretation of the claim limitations in claims 1 and 15 are overly narrow, arguing

> "Nowhere does Prociw disclose a combustor liner cap assembly, an end cover and a cellular solid media disposed within the combustor liner cap assembly and/or between the combustion liner cap assembly and an end cover to the combustor. (page 7 of the appeal brief)"

The elements identified by the Examiner are appropriately read on the claimed elements, they are in the analogous region, i.e. in the upstreammost region of the combustor, also known as the "head" of the combustor and even around the burner tubes. Hence, the combustor cap assembly can be reasonably interpreted to include the region in the "head" of the combustor. While the elements identified by the Examiner may not always have element numbers, that does not detract from the fact that these elements can be fairly read on the claimed invention. Each of the applied references clearly employs a combustor liner and a cap assembly that closes off one end of the combustor. Note that Webster's New Dictionary and Thesaurus, concise edition, 1990 defines "cap" as "a cover; a top –vt to cover (the end of)." Appellant's allegations hence do not defined over the art of record which structurally teach the claimed limitations.

In response to Appellant's argument that the references fail to show certain features of Appellant's invention, it is noted that the features upon which Appellant relies (i.e., the head end assembly including conventional supply tubes, manifolds, valves, even the feeding of gas, liquid fuel, air and water) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Appellant's arguments on pages 8 and 9 of the appeal brief, appear to argue that the applied references must have the exactly same structure as disclosed by the Appellant in order to meet the claim limitations. Thus Appellant's arguments and claim interpretation lies at odds with the requirement for the examination process to use the "broadest reasonable interpretation" as set forth in MPEP 2111, which is cited below for Appellant's convenience.

> **2111 Claim Interpretation; Broadest Reasonable Interpretation [R-5] - 2100 Patentability**
>
> **CLAIMS MUST BE GIVEN THEIR BROADEST REASONABLE INTERPRETATION**
>
> During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." >The Federal Circuit's *en banc* decision in *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) expressly recognized that the USPTO employs the "broadest reasonable interpretation" standard: The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364[, 70 USPQ2d 1827] (Fed. Cir. 2004). Indeed, the rules of the PTO require that application claims must "conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or

antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description." 37 CFR 1.75(d)(1).
415 F.3d at 1316, 75 USPQ2d at 1329. See also< *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Appellant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) (Claim 9 was directed to a process of analyzing data generated by mass spectrographic analysis of a gas. The process comprised selecting the data to be analyzed by subjecting the data to a mathematical manipulation. The examiner made rejections under 35 U.S.C. 101 and 102. In the 35 U.S.C. 102 rejection, the examiner explained that the claim was anticipated by a mental process augmented by pencil and paper markings. The court agreed that the claim was not limited to using a machine to carry out the process since the claim did not explicitly set forth the machine. The court explained that "reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from 'reading limitations of the specification into a claim,' to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim." The court found that Appellant was advocating the latter, i.e., the impermissible importation of subject matter from the specification into the claim.). See also *In re Morris,* 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997) (The court held that the PTO is not required, in the course of prosecution, to interpret claims in applications in the same manner as a court would interpret claims in an infringement suit. Rather, the "PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in Appellant's specification.").
The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999) (The Board's construction of the claim limitation "restore hair growth" as requiring the hair to be returned to its original state was held to be an incorrect interpretation of the limitation. The court held that, consistent with Appellant's disclosure and the disclosure of three patents from analogous arts using the same phrase to require only some increase in hair growth, one of ordinary skill would construe "restore hair growth" to mean that the claimed method increases the amount of hair grown on the scalp, but does not necessarily produce a full head of hair.).

Furthermore, Appellant's arguments fail to give the plain meaning of the claims weight and improperly import limitations from the specification into the claims.

2111.01 Plain Meaning [R-5]

I. THE WORDS OF A CLAIM MUST BE GIVEN THEIR "PLAIN MEANING" UNLESS **>SUCH MEANING IS INCONSISTENT WITH< THE SPECIFICATION

**>Although< claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004) (The USPTO uses a different standard for construing claims than that used by district courts; during examination the USPTO must give claims their broadest reasonable interpretation >in light of the specification<.). This means that the words of the claim must be given their plain meaning unless **>the plain meaning is inconsistent with< the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (discussed below); *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004) (Ordinary, simple English words whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are construed to mean exactly what they say. Thus, "heating the resulting batter-coated dough to a temperature in the range of about 400°F to 850°F" required heating the dough, rather than the air inside an oven, to the specified temperature.). **
>

II. IT IS IMPROPER TO IMPORT CLAIM LIMITATIONS FROM THE SPECIFICATION

"Though understanding the claim language may be aided by explanations contained in the written description, it is important not to import into a claim limitations that are not part of the claim. For example, a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment." *Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875, 69 USPQ2d 1865, 1868 (Fed. Cir. 2004). See also *Liebel-Flarsheim Co. v. Medrad Inc.*, 358 F.3d 898, 906, 69 USPQ2d 1801, 1807 (Fed. Cir. 2004)(discussing recent cases wherein the court expressly rejected the contention that if a patent describes only a single embodiment, the claims of the patent must be construed as being limited to that embodiment);< *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) ("Interpretation of descriptive statements in a patent's written description is a difficult task, as an inherent tension exists as to whether a statement is a clear lexicographic definition or a description of a preferred embodiment. The problem is to interpret claims 'in view of the specification' without unnecessarily importing limitations from the specification into the claims."); *Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1371, 65 USPQ2d 1865, 1869-70 (Fed. Cir. 2003) (Although the specification discussed only a single embodiment, the court held that it was improper to read a specific order of steps into method claims where, as a matter of logic or grammar, the language of the method claims did not impose a specific order on the performance of the method steps, and the specification did not directly or implicitly require a particular order). See also paragraph *>IV.<, below. **>When< an element is claimed using language falling under the scope of 35 U.S.C. 112, 6th paragraph (often broadly referred to as means or step plus function language)**, the specification must be consulted to determine the structure, material, or acts corresponding to the function

recited in the claim. *In re Donaldson*, 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994) (see MPEP § 2181- § 2186).
In *In re Zletz, supra,* the examiner and the Board had interpreted claims reading "normally solid polypropylene" and "normally solid polypropylene having a crystalline polypropylene content" as being limited to "normally solid linear high homopolymers of propylene which have a crystalline polypropylene content." The court ruled that limitations, not present in the claims, were improperly imported from the specification. See also *In re Marosi,* 710 F.2d 799, 218 USPQ 289 (Fed. Cir. 1983) ("Claims are not to be read in a vacuum, and limitations therein are to be interpreted in light of the specification in giving them their 'broadest reasonable interpretation'." 710 F.2d at 802, 218 USPQ at 292 (quoting *In re Okuzawa,* 537 F.2d 545, 548, 190 USPQ 464, 466 (CCPA 1976)) (emphasis in original). The court looked to the specification to construe "essentially free of alkali metal" as including unavoidable levels of impurities but no more.). Compare *In re Weiss,* 989 F.2d 1202, 26 USPQ2d 1885 (Fed. Cir. 1993) (unpublished decision - cannot be cited as precedent) (The claim related to an athletic shoe with cleats that "break away at a preselected level of force" and thus prevent injury to the wearer. The examiner rejected the claims over prior art teaching athletic shoes with cleats not intended to break off and rationalized that the cleats would break away given a high enough force. The court reversed the rejection stating that when interpreting a claim term which is ambiguous, such as "a preselected level of force", we must look to the specification for the meaning ascribed to that term by the inventor." The specification had defined "preselected level of force" as that level of force at which the breaking away will prevent injury to the wearer during athletic exertion. **)
*>

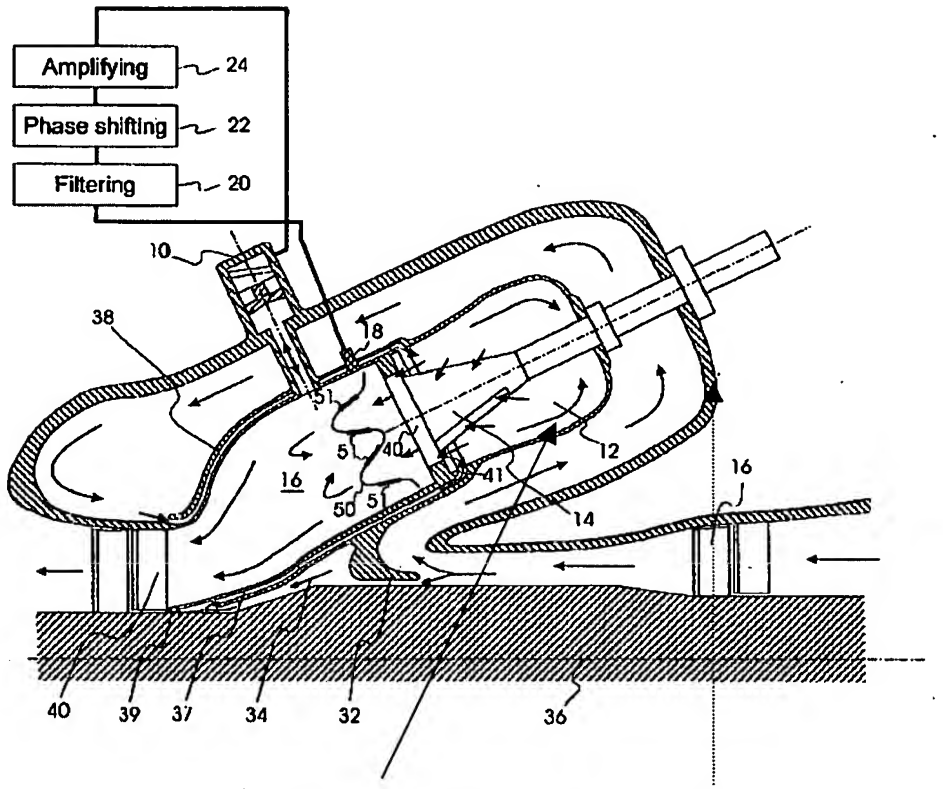
III. <"PLAIN MEANING" REFERS TO THE ORDINARY AND CUSTOMARY MEAN-ING GIVEN TO THE TERM BY THOSE OF ORDINARY SKILL IN THE ART

"[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, *i.e.*, as of the effective filing date of the patent application." *Phillips v. AWH Corp.*, *>415 F.3d 1303, 1313<, 75 USPQ2d 1321>, 1326< (Fed. Cir. 2005) (*en banc*). *Sunrace Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003); *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 67 USPQ2d 1132, 1136 (Fed. Cir. 2003)("In the absence of an express intent to impart a novel meaning to the claim terms, the words are presumed to take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art."). It is the use of the words in the context of the written description and customarily by those skilled in the relevant art that accurately reflects both the "ordinary" and the "customary" meaning of the terms in the claims. *Ferguson Beauregard/Logic Controls v. Mega Systems*, 350 F.3d 1327, 1338, 69 USPQ2d 1001, 1009 (Fed. Cir. 2003) (Dictionary definitions were used to determine the ordinary and customary meaning of the words "normal" and "predetermine" to those skilled in the art. In construing claim terms, the general meanings gleaned from reference sources, such as dictionaries, must always be compared against the use of the terms in context, and the intrinsic record must always be consulted to identify which of the different possible dictionary meanings is most consistent with the use of the words by the inventor.); *ACTV, Inc. v. The Walt Disney Company*, 346 F.3d 1082, 1092, 68 USPQ2d 1516, 1524 (Fed. Cir.

2003) (Since there was no >express< definition given for the term "URL" in the specification, the term should be given its broadest reasonable interpretation >consistent with the intrinsic record< and take on the ordinary and customary meaning attributed to it by those of ordinary skill in the art; thus, the term "URL" was held to encompass both relative and absolute URLs.); and *E-Pass Technologies, Inc. v. 3Com Corporation*, 343 F.3d 1364, 1368, 67 USPQ2d 1947, 1949 (Fed. Cir. 2003) (Where no explicit definition for the term "electronic multi-function card" was given in the specification, this term should be given its ordinary meaning and broadest reasonable interpretation; the term should not be limited to the industry standard definition of credit card where there is no suggestion that this definition applies to the electronic multi-function card as claimed, and should not be limited to preferred embodiments in the specification.).
The ordinary and customary meaning of a term may be evidenced by a variety of sources, >including "the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art."< *Phillips v. AWH Corp.*, *>415 F.3d at 1314<, 75 USPQ2d **>at 1327.< If extrinsic reference sources, such as dictionaries, evidence more than one definition for the term, the intrinsic record must be consulted to identify which of the different possible definitions is most consistent with Appellant's use of the terms. *Brookhill-Wilk 1*, 334 F. 3d at 1300, 67 USPQ2d at 1137; see also *Renishaw PLC v. Marposs Societa" per Azioni*, 158 F.3d 1243, 1250, 48 USPQ2d 1117, 1122 (Fed. Cir. 1998) ("Where there are several common meanings for a claim term, the patent disclosure serves to point away from the improper meanings and toward the proper meanings.") and *Vitronics Corp. v. Conceptronic Inc.*, 90 F.3d 1576, 1583, 39 USPQ2d 1573, 1577 (Fed. Cir. 1996) (construing the term "solder reflow temperature" to mean "peak reflow temperature" of solder rather than the "liquidus temperature" of solder in order to remain consistent with the specification.). If more than one extrinsic definition is consistent with the use of the words in the intrinsic record, the claim terms may be construed to encompass all consistent meanings. ** See *>e.g.,< *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001)(explaining the court's analytical process for determining the meaning of disputed claim terms); *Toro Co. v. White Consol. Indus., Inc.*, 199 F.3d 1295, 1299, 53 USPQ2d 1065, 1067 (Fed. Cir. 1999)("[W]ords in patent claims are given their ordinary meaning in the usage of the field of the invention, unless the text of the patent makes clear that a word was used with a special meaning."). Compare *MSM Investments Co. v. Carolwood Corp.*, 259 F.3d 1335, 1339-40, 59 USPQ2d 1856, 1859-60 (Fed. Cir. 2001) (Claims directed to a method of feeding an animal a beneficial amount of methylsulfonylmethane (MSM) to enhance the animal's diet were held anticipated by prior oral administration of MSM to human patients to relieve pain. Although the ordinary meaning of "feeding" is limited to provision of food or nourishment, the broad definition of "food" in the written description warranted finding that the claimed method encompasses the use of MSM for both nutritional and pharmacological purposes.); and *Rapoport v. Dement*, 254 F.3d 1053, 1059-60, 59 USPQ2d 1215, 1219-20 (Fed. Cir. 2001) (Both intrinsic evidence and the plain meaning of the term "method for treatment of sleep apneas" supported construction of the term as being limited to treatment of the underlying sleep apnea disorder itself, and not encompassing treatment of anxiety and other secondary symptoms related to sleep apnea.).

Appellant's arguments with regard to Griffin are not persuasive, apparently Appellant looks only to Fig. 1, when the entire disclosure must be taken into account. Figs. 2 and 3 show the rest of the combustor liner cap assembly and further illustration of this is made above to clarify the Examiner's position. Appellant's arguments concerning the cellular solid media is disposed in the flow path of the combustor and not in the combustor liner cap assembly and/or between the combustor liner cap assembly and end cover to the combustor are not persuasive because the features upon which Appellant relies are not recited in the rejected claim(s). There is nothing in the claims to set forth the cellular media cannot be within the burner or the flow path thereof. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Appellant's arguments concerning the inherency are mislead, the inherency only regards the nature of the end cover being inherent in such a device. The end cover is clearly shown in the Gutmark et al patent (6,464,489), which belongs to the same assignee as the Griffin et al patent and is necessary for enclosing the head end of the combustor and directing the air.



end cover or alternate end cover

As for Appellant's arguments concerning JP '549, this reference does show the claimed elements in the required location. Again, Appellant is reading into the claims limitations from the specification, which is expressly prohibited.

In response to Appellant's argument that there is no suggestion to combine the references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Brown clearly teaches that

using metal foams allows for noise reduction [page 4, paragraph 0031] in a series of tortuous flow paths. Grandey clearly teaches that metal foams can handle the high temperature ranges in the gas turbine engines. Hence, one of ordinary skill in the art would be fairly taught that using metal foams for the noise attenuation rather than the broad disclosure of a general sound reducing material in JP '549, would be suitable for the purpose of reducing the noise. Hence, Appellant's allegations that the proposed combination would not reduce the sound with Grandey and/or Brown are mislead.

Furthermore, for JP '549 Appellant argues that "the noise attenuation [occurs] in the premixer hot section and do not teach disposing a cellular media such as a metal foam for noise attenuation for cap and inlet flow areas where the temperatures are less than the premixer hot section." Applicant's arguments concerning this point clearly lack technical merit. First, the sound reducing material is not in the so called "premixer hot section." That section would be considered to be just upstream of element 4 to those of ordinary skill in the art. The region of noise reduction 14, 15 is positioned away from the combustor hot area 4 and in the claimed location of within the combustor liner end cap assembly and/or between the combustor liner cap and the end cover to the combustor. Regardless of how the JP '549 is read for these elements, the JP '549 clearly teaches the noise reducing material in the claimed location.

In response to Appellant's arguments against the references individually in the Griffin in view of Gutmark combination, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to Appellant's argument that there is no suggestion to combine the references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Gutmark is cited merely to show where the end cover would be in a combustor for a gas turbine engine, where the assignee is the same assignee and knowing the arrangement of Griffin requires an end cover to direct the airflow.

Appellant's arguments regarding the Griffin in view of Gutmark combination are not persuasive. In response to Appellant's argument that the combination would require acoustically exiting a shear layer, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In conclusion, due to Appellant's overly limiting interpretation of the claims and relying on features in the claims where are simply not present, Appellant's arguments are fatally flawed.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

(11) Related Proceeding(s) Appendix

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Ted Kim/
Ted Kim
Primary Examiner

Conferees:

Anthony Stashick
SPE

Marc Jimenez
TQAS